

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CYNTHIA GARIBAY, an individual,  
Plaintiff,  
vs.  
AMERICAN HOME MORTGAGE  
CORP., a New York Corporation,  
WELLS FARGO HOME MORTGAGE,  
INC., a California Corporation & DOES 1  
through 20,  
Defendants.

CASE NO. 09cv1460-WQH-CAB  
ORDER

HAYES, Judge:

On July 7, 2009, Plaintiffs initiated this action by filing the Complaint in this Court. (Doc. # 1).

On October 29, 2009, Defendant Wells Fargo Home Mortgage, Inc. filed a Motion to Dismiss Or Alternatively Motion for a More Definite Statement (“Motion to Dismiss”). (Doc. # 5).

On October 29, 2009, Defendant American Home Mortgage Corp. filed a “Suggestion of Bankruptcy” with this Court. (Doc. # 8). The Suggestion of Bankruptcy notified the Court that on August 6, 2007, American Home Mortgage Corp. filed a voluntary petition with the United States Bankruptcy Court of the District of Delaware, Bankruptcy case number 07-11051.

Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), operates as an automatic stay of the commencement or continuation of a judicial proceeding against the debtor,

1 commenced prior to the filing of bankruptcy. However, “[i]n the absence of special  
2 circumstances, stays pursuant to section 362(a) are limited to debtors and do not include  
3 non-bankrupt co-defendants.” *Ingersoll-Rand Fin. Corp. v. Miller Mining Co., Inc.*, 817 F.2d  
4 1424, 1427 (9th Cir. 1987) (citations omitted). The Ninth Circuit explained that under “special  
5 circumstances,” the bankruptcy court may extend to stay to other entities pursuant to 11 U.S.C.  
6 § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate  
7 to carry out the provisions of this title.”). *Ingersoll-Rand Fin. Corp.*, 817 F.2d at 1427. The  
8 Ninth Circuit held that in “the absence of any order from the bankruptcy court staying  
9 proceedings as to the [non-bankrupt co-defendants],” a plaintiff’s action may proceed against  
10 the non-bankrupt co-defendants. *Id.*


11 No filing in this Court has indicated that the bankruptcy stay which applies to  
12 Defendant American Home Mortgage Corp. has been extended to co-Defendant Wells Fargo  
13 Home Mortgage, Inc.

14 IT IS HEREBY ORDERED that the action in this Court is **STAYED as to Defendant**  
15 **American Home Mortgage Corp. only**. This action is **NOT STAYED as to Plaintiff’s**  
16 **claims against all other Defendants**.

17 Any opposition to the pending Motion to Dismiss (Doc. # 5) must be filed no later than  
18 **December 4, 2009**. Any reply must be filed no later than **December 11, 2009**. There will be  
19 no oral argument on the Motion to Dismiss.

20 Defendant American Home Mortgage Corp. is **ORDERED** to notify the Court in  
21 writing of any changes in the bankruptcy case relevant to this action, including but not limited  
22 to a discharge or dismissal of the bankruptcy case. The Clerk of the Court shall mail a copy  
23 of this Order to counsel for Defendant American Home Mortgage Corp., as listed in the  
24 Suggestion of Bankruptcy. (Doc. # 8 at 2).

25 DATED: November 13, 2009

26   
27 **WILLIAM Q. HAYES**  
28 United States District Judge